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REPORTER'S RECORD

VOLUME 52 OF 57 VOLUMES

TRIAL COURT CAUSE NO. F12-23749-W

COURT OF CRIMINAL APPEALS NUMBER: AP-77,030

THE STATE OF TEXAS	:	IN THE 363RD JUDICIAL
VS.	:	DISTRICT COURT OF
MATTHEW LEE JOHNSON	:	DALLAS COUNTY, TEXAS

PUNISHMENT PHASE BY JURY

On the 7th day of November, 2013, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Tracy Holmes, Judge Presiding, held in Dallas, Dallas County, Texas:

Proceedings reported by machine shorthand computer assisted transcription.

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1 P R O C E E D I N G S

2 THE COURT: All right. If you'd line them up,
3 please.

4 THE BAILIFF: Yes, ma'am.

5 (Pause.)

6 THE BAILIFF: All rise.

7 (Jury returned to courtroom.)

8 THE COURT: We need another chair over there for
9 Mr. Arras.

10 MR. ARRAS: No, ma'am.

11 THE COURT: You have one?

12 MR. ARRAS: Yes.

13 THE COURT: Please be seated.

14 Good morning, ladies and gentlemen. I'm now
15 going to read to you the Court's charge.

16 Court's charge: Members of the jury, by your
17 verdict in this case, you have found the Defendant, Matthew Lee
18 Johnson, guilty of the offense of capital murder, alleged to
19 have been committed on or about the 20th day of May 2012 in
20 Dallas County, Texas.

21 (Charge of the Court read.)

22 THE COURT: It is signed by me, Tracy Holmes,
23 Judge of the 363rd Judicial District Court, and the two
24 remaining pages are the special issues.

25 Special Issue Number 1 is set out with a blank

1 for the answer. If it's unanimous, the presiding juror signs
2 here. If it's not unanimous, the 10 jurors sign here. If your
3 answer to Special Issue Number 1 is yes, then you shall proceed
4 to Special Issue Number 2. If your answer to Special Issue
5 Number 1 is no, you shall cease your deliberations. If your
6 answer to Special Issue Number 1 is no and is not unanimous,
7 you need to have 10 jurors sign.

8 Special Issue Number 2. Do you find, taking
9 into consideration all of the evidence, including the
10 circumstances of the offense - I'm sorry, I need to read that.

11 Special Issue Number 1. Do you find from the
12 evidence beyond a reasonable doubt that there is a probability
13 that the Defendant, Matthew Lee Johnson, would commit criminal
14 acts of violence that would constitute a continuing threat to
15 society. And, again, if you have a unanimous yes, the
16 presiding juror only needs to sign. If you have 10 who vote
17 no, all 10 need to sign.

18 Special Issue Number 2. Do you find, taking
19 into consideration all of the evidence, including the
20 circumstances of the offense, the Defendant's character and
21 background, the personal moral culpability of the Defendant,
22 there is -- that there is sufficient mitigating circumstance or
23 circumstances that a life -- that a sentence of life
24 imprisonment without parole, rather than a death sentence, be
25 imposed -- and there's, again, a line for a unanimous answer by

1 the presiding juror and if -- unanimous no. And if your answer
2 is yes, 10 or more sign.

3 All right. Ms. Evans.

4 (Argument by Ms. Evans.)

5 MS. EVANS: May it please the Court.

6 Counsel.

7 Members of the jury, you have been operating
8 under a specific set of instructions that you've not been
9 permitted to talk about the facts of this case until the close
10 of trial. I submit to you that the trial will close and you
11 will be released from those instructions and you'll be
12 permitted to talk about your experience over these last two
13 weeks, if you choose to. You'll be able to talk amongst your
14 family, your friends, and your coworkers about what it was you
15 sat and listened to over the course of these last two weeks.
16 And I think you might find it difficult to describe the
17 experience you've had because there are simply no words. No
18 words to describe what you have seen, what you have heard, or
19 what you have likely felt during the course of these last two
20 weeks.

21 And I'm not going to take you back through those
22 photographs of Ms. Harris, and I'm not going to play that video
23 for you again where you can hear her screams and her cries for
24 help on that day. You don't need to be reminded of that.
25 That's something that's going to be implanted in your memory

1 for a lifetime, as right it should. Because that is very
2 disturbing.

3 And there are absolutely no words to describe it
4 because you see, the actions of Matthew Lee Johnson on
5 May 20th, 2012, are completely indescribable. Maybe we could
6 call it inhumane at best. You know, several of you jurors --
7 several of you, whenever we talked to you back on voir dire,
8 said that if somebody has a total disregard for the life of
9 another, total disregard for their life, why should we regard
10 theirs. Folks, that's what you're going to be called upon to
11 answer today based on the evidence in this case and based on
12 the special issues and how you answer those. You're going to
13 determine literally whether this man lives or dies based on the
14 evidence and based on how you answer those special issues.

15 And so I want to take you back to when we first
16 met, back June 21st, that morning down in the Central Jury Room
17 on a Friday. When you got here, you probably had no idea that
18 you would sit up there and fill out an 18-page questionnaire
19 where we were asking you to detail your thoughts and feelings
20 regarding something like the death penalty. Probably had no
21 clue. But the 14 of you were very thoughtful and considerate
22 and took the time to answer those questions and tell us how you
23 really felt about the death penalty and when it was deserving
24 and when it was appropriate and what factors might be important
25 to you in deciding that. And remember, every seat was filled

1 in there that morning, and remember we told you back whenever
2 we talked to you individually, that we had the same number of
3 people come that afternoon and yet we are down to the 14 of
4 you, because not everyone can sit and judge another and not
5 everyone could answer those special issues based on the
6 evidence and based on the facts and the circumstances because
7 of their beliefs and because they couldn't participate in this
8 process. But the 14 of you could.

9 In fact, when we brought you down for individual
10 voir dire, myself and Andrea and Rocky talked to each of you.
11 I personally think I talked to six of the 14 of you, and each
12 of you at that time took an oath to tell the truth. That's all
13 we were asking you at that time. We were talking to you about
14 the stuff you put in the questionnaire. We were asking you if
15 you could follow the law. And unfortunately, we had to keep
16 you in a vacuum and we couldn't talk to you about the facts of
17 this case and what you would hear, because it was improper
18 under the law. And I can remember many of you sitting there
19 very uncomfortable because you're thinking, well, I don't know,
20 I don't know, because you couldn't sit there and contemplate
21 and think of a situation where you may or may not be able to do
22 something. But the 14 of you were qualified and you guaranteed
23 us that under the proper set of facts and the proper set of
24 circumstances, if we proved to you beyond a reasonable doubt
25 Special Issue Number 1, and you went on to consider Special

1 Issue Number 2 and didn't find based on the evidence anything
2 sufficiently mitigating you could and you would answer those
3 special issues yes and no, that would result in the death of
4 this man by lethal injection. Each of the 14 of you guaranteed
5 us that you could, in fact, participate in this process. And
6 I'm going to take you at your word that obviously because of
7 your well-thought-out answers in the questionnaire and at the
8 time of that interview, that you were being honest with us and
9 that you were telling us the truth and that you are going to
10 base your verdict on the two things, the two things only that
11 your verdict can be based on, and that is the law as it's given
12 to you by the Court -- and that's the charge that you can take
13 back with you -- and the evidence as you've heard it in this
14 case.

15 But you see, whenever I tell you that we were
16 talking in a vacuum, you were at a disadvantage at that time.
17 You didn't know the things that the State of Texas knew. You
18 didn't know the things that my boss, Craig Watkins, took into
19 consideration when he was deciding that, yes, the State of
20 Texas is going to seek the death penalty against this man. You
21 didn't know that back when we talked to you. And that was the
22 reason we let you know what our goal was because we knew. We
23 knew you were going to hear the type and the quality and the
24 quantity of evidence that was going to leave you as jurors no
25 other choice but to answer those special issues yes and no.

1 Now you know. Now you've heard it. Now you
2 know everything that the State of Texas knew in making that
3 decision to seek the death penalty, and we've proven it to you
4 beyond a reasonable doubt.

5 And so I'm going to take you at your word
6 whenever you said that you were giving us true answers at that
7 time, when you guaranteed us. And, you know, we had to look
8 over at this man, because it's not something -- it was very
9 much of a process. Remember, we told you this is a process.
10 It's all part of the process. We had to look at this man and
11 let you realize that we're talking about a living, breathing
12 human being that puts his pants on like everybody else and he
13 has family that loves him because we anticipated that you might
14 hear from some of those family members. We anticipated them.

15 But, you know, that doesn't change the evidence
16 and that doesn't change the law. And that's why each of the 14
17 of you are jurors in this case, because I tell you, most of the
18 people came down, the vast majority could not participate in
19 this process for one reason or another, but you could, even
20 after looking over at this man and realizing the significance
21 of what we were asking you to play a part in. And so I'll take
22 you at your word that you can do that.

23 Now, let's talk more about what it is that we
24 discussed in voir dire and what it is the State of Texas has
25 proven to you beyond a reasonable doubt since last Thursday in

1 the punishment phase of this trial. You'll recall Special
2 Issue Number 1: Do you find from the evidence beyond a
3 reasonable doubt there is a probability -- that it is more
4 likely than not -- that this Defendant over here would commit
5 criminal acts of violence that would constitute him being a
6 continuing threat to society.

7 Now, I looked back over your questionnaires and
8 the things that were going to be important to you, and I looked
9 back at the notes that we took when we were talking to you in
10 voir dire and most every one of you said the facts of the
11 instant offense were going to be most important to you in
12 making that determination. All of you said the facts of the
13 offense for which the Defendant was on trial. The facts which
14 you have found this Defendant guilty of, the capital murder
15 offense, was going to be an important factor to you in
16 determining if he's more likely than not going to be a future
17 danger even in prison.

18 Now, several of you also said that, hey, a
19 person's past is a good predictor of the future. So you get to
20 look at all that. You get to look at everything that you heard
21 back in the guilt/innocence phase of this trial, exactly how
22 this crime was committed, the before, the during, and the after
23 actions of this Defendant in making the determination. Not
24 only that, you get to look at the entire case, the life history
25 that goes back -- we talked back all the way to when he was 15

1 years old when this behavior started. He's 38 now, and it's
2 only gotten worse. But each of the 14 of you said that you
3 could follow the law and you did understand that the law allows
4 you to answer Special Issue Number 1 yes based solely on the
5 facts of the offense for which you found the Defendant guilty
6 of. And do you understand now why the law is the way that it
7 is? Because most of you said important factors in looking at
8 the facts of the case that would lead you to a determination of
9 yes in Special Issue Number 1 is how severe the offense was,
10 how heinous the offense was, how horrific it was, how violent
11 the offense was, and the pain and suffering that the victim
12 went through at the hands of this man. Those were things that
13 were important to you, and rightly so. Didn't you see that
14 from the action of this Defendant on May 20th, 2012?

15 Now, let's first look at his history because
16 you've heard a lot of it since last Thursday. You know, I said
17 it dated back to when he was 15 years old. He was already
18 driving around in a stolen car with his buddies getting
19 arrested. He's already pushing uniformed police officers at a
20 very early age. And, of course, he's stealing. And, of
21 course, he's laying his hands on women.

22 Amy Armstrong. And that was a very short
23 relationship. Do you recall how she described to you after he
24 hit her and his hand had grazed the child, the two-year-old
25 child that she was holding at the time that he assaulted her.

1 That she said, that's it, my kids are all that I have and she
2 put him out and she locked him out. He wasn't going to stand
3 for that, was he? Doesn't that tell you a lot about the
4 character of a man and character of this person on trial when
5 they don't go away that easily? What did he do? She said he
6 came back to the door and tried to ask nicely to come back in.
7 But remember, he doesn't have anywhere else to go. How dare
8 her put him out. Where was he supposed to go now? Well, maybe
9 try not hitting her. You think that might be a start? But he
10 asked nicely at first because that's what he does, right? He
11 manipulates. And when that doesn't work, when he doesn't get
12 his way because it's all about him, he resorts to more
13 violence. He starts kicking in that door.

14 Sound familiar? He did that later, too, with
15 Daphne, did he not? He starts kicking in that door. Not only
16 is he kicking in the door, he's beating on the windows of the
17 child -- the children's bedroom, those three children in there.
18 Beating on their windows to the point that she puts mattresses
19 up to barricade them in and barricades the door because he's
20 kicking it so hard, she's thinking he's going to kick it in.
21 The children are hiding in the closet, and she's laying in wait
22 with the Defendant's gun. Did you think she knew he was going
23 to be a future danger that night? Can you imagine laying there
24 in wait for this man to come in? But he brought her out,
25 didn't he? He resorted to fire, early on. He threw an object

1 up on her porch to draw her out because she wouldn't open the
2 door, right? That would bring her out. And so she told you it
3 was over after that. She was smart enough to know and realize
4 what this man is and who he was. It was over after that.

5 So the assaults on Amy for a short period of
6 time and then the only drug possession case that he has in his
7 criminal history, the possession of marijuana. Remember
8 whenever he put the blunt out on the back of his neck with
9 Officer Oliver? He was arrested for that in 1993.

10 Continuing on, he was arrested for the assault
11 warrants. He's arrested on the possession of -- possession of
12 marijuana warrants. And remember, he told you -- or he agreed
13 that he's been in the back of a squad car some 25 to 26 times.
14 Do you think it's just going to stop all of a sudden, his
15 violence? You know, he does the resisting arrest when he's 18
16 years old, whenever he bit -- they're taking him in on warrants
17 and he's not going down easily. They're having to use pepper
18 spray to get control of him and the baton to try to get control
19 of him. And what does he tell you? Yeah, I bit them because I
20 was angry, angry at the two uniformed officers.

21 So an 18-year-old man is going to bite both of
22 the officers so hard that they have to go to the hospital. And
23 remember he bit Officer Ehrman's watch completely off. He
24 didn't just bite the watch. He bit the skin to the point where
25 he had to go to the hospital, as well. Two uniformed officers,

1 because he was angry at the age of 18.

2 And we know that he evades from the police every
3 time that he's about to get caught or something is about to go
4 down, he runs, does he not? He ran from Officer Ralston. And
5 remember, that's the time that he drug Daphne into his criminal
6 ways. She's driving the car and he's pointing to her and
7 Officer Ralston's saying he can see this passenger, this
8 Defendant, pointing to go, go, go, and she goes. And what does
9 she do? She gets a criminal case because he's telling her to
10 go and park at the house, all because he tells you he didn't
11 want the car to get towed. But he didn't stop there once he
12 got to the house, did he? He bailed out on foot. And Officer
13 Ralston told you that, no, he didn't go easily, that he had to
14 use muscling techniques to get him to comply and to get him
15 under arrest.

16 And then you have the aggravated assault with a
17 deadly weapon against Courtney. Is it any wonder that
18 Courtney, who's close with him -- you heard her testify -- is
19 not going to remember him pointing the gun at her on that
20 night? And Daphne is going to sit and tell you, no, I don't
21 remember that. He was on felony probation for five years and
22 arrested that night after you heard repeated threats all
23 throughout the night going down after he pointed the gun at
24 Courtney, but yet, Daphne and Courtney aren't willing to tell
25 you that they remember that one.

1 Why not? Well, aggravated assault with a deadly
2 weapon where you're pointing a gun at someone, you think that
3 might -- that past conduct might be a pretty good predictor of
4 the future, the future dangerousness of this man? Absolutely.
5 So they are not willing to tell you the five years he was on
6 probation for that offense, but he told you, yeah, he was.

7 And then if any -- if you needed to know any
8 more about his mind-set on that evening, when Officer Clark
9 goes to arrest him -- remember, Officer Clark tells you that he
10 tells him, you'll get yours when you get back on the street.
11 Threatens the uniformed officer after he's placed under arrest.
12 Officer, you'll get yours when you get back on the street.

13 Future danger? You know he was. And that was
14 back in 1995. And it continues from there. He starts
15 assaulting Daphne multiple times. You heard about the time
16 where he beat her so bad that she had the bruises on her face
17 and couldn't go to work for a period of two weeks because of
18 the beatings at the hands of this man. And, of course, he's
19 still running from the police.

20 You remember the one with Officer Steadman and
21 Officer Lacey when they responded to the hit-and-run and he
22 runs throughout the neighborhood, and Officer Steadman finally
23 gets him to place him under arrest.

24 And then he has another theft, and then you'll
25 recall that Daphne finally gets enough of it and you have her

1 affidavit that she filed where she details the behavior of this
2 Defendant and what he had put her through. She finally says
3 she's going to put a stop to it. Did that stop him? She
4 thought maybe he wasn't going to be a future danger to her and
5 her kids anymore because she got that sheet of paper. She came
6 down here and asked for protection. She got that protective
7 order. Did that stop him? Did that keep him from being a
8 future danger to Daphne?

9 And remember he told you, yeah, the kids were
10 scared at times. He said he could remember at least one
11 occasion when the kids were present whenever he was giving her
12 her beating. That didn't stop him. You heard he violated that
13 protective order. Remember kicking the door? The officers
14 caught him there behind the residence.

15 But before he violates that protective order,
16 you'll recall the robbery. You know, when other people --
17 other productive members of our society are up trying to get
18 ready for work and go to work so that they can provide for
19 their families and their children, this man is out placing his
20 hands on another woman, dragging her out of her own truck,
21 throwing her out after he's laying on top of her to try to get
22 control of it, and he ends up wrecking that truck out. Future
23 danger?

24 He's laid his hands, you've heard now, on three
25 women up to this point in 2004. Drug her out of a truck, and

1 it didn't stop there. Remember after he wrecked the truck out,
2 he places Officer St. Clair in danger of his livelihood, as
3 well, because Officer St. Clair has taken off after him, after
4 he's fleeing and wrecked out this truck, and he ends up
5 stepping in a hole and breaking his ankle that day. And
6 Officer St. Clair kept going, trying to protect the members of
7 our society, the members of this community, against this man
8 because he didn't stop there. He kept trying to climb a fence.
9 That was the offense in 2004. And then he finally got sent to
10 prison for a period of five years.

11 And so remember back on voir dire, we told you
12 that what we were asking you to do is essentially take out a
13 crystal ball and try to predict what someone might do in the
14 future based on the facts of the offense for which you found
15 him guilty and based on their past conduct that you've heard.
16 Well, you don't have to get out your crystal ball anymore
17 because we know how he acts once he's in prison. You know how
18 he responds to that type of life, and you heard from
19 detective -- or Warden Nelson that if he receives a life
20 sentence, he's going back to that same environment. He's going
21 back to general population, the same place where if he gets
22 tired of living with you in these close surroundings and close
23 quarters, he will split your head wide open because that's how
24 he resolves his differences. Picked Carlton Jenkins up and
25 slammed him to the ground. He was reclassified at that point,

1 but you heard once he got transferred to the other unit,
2 somehow he manipulated his way back to G2 again and then they
3 let him be an outside trusty. Folks, they were wrong about
4 him, were they not?

5 Then you hear -- or he tells you from the stand
6 that, you know what, when I was reclassified and became a G4,
7 it was my job then to be a model inmate. After I got put in
8 that solitary confinement, I was going to change. I had a
9 purpose and I was going to Bible study and I was going to this
10 and going to that and receiving these certificates and I was
11 exercising and working out and I was going to be the model
12 inmate. I was the model inmate. Remember him telling you that
13 after getting placed in solitary confinement following that
14 fight, that his whole attitude on things changed. Really? The
15 model inmate is masturbating and grinning to 18-year-old
16 Correctional Officer Ashley Villegas. You heard from Warden
17 Nelson about why inmates do that. It's all another form of
18 manipulation, seeing how much you can get away with, how much
19 they'll tolerate so that you can push the envelope further.
20 Intimidation tactics and manipulation tactics. That's your
21 model inmate in 2006.

22 Their own witness told you he had refusing to
23 obey orders in his records, and he had something else that the
24 witness couldn't recall. And he told you that a lot of those
25 minor disciplinary actions, they get discarded -- their own

1 witness, after several years have passed. But you heard he
2 wasn't going to work. He wasn't going to school. Sound
3 familiar? He was doing that with Amy Armstrong, whenever she
4 was providing for him, he didn't even have a key there because
5 he wasn't providing for them. He wasn't working. He wasn't
6 going to school then. Did anything change once he got to
7 prison? No. You don't change the character of a man. You
8 know who you have before you today.

9 Not only is he doing that, you know, he got
10 those tattoos -- several of his tattoos in prison. He wants to
11 lead you to believe that the money bags with the fist gripping
12 it means that he's breaking bread, much like the Lord's Supper,
13 that he's sharing, he's willing to share everything he has.
14 Really? He's willing to take and resort to robbery and laying
15 his hands on innocent defenseless victims to do so, is he not?
16 And when you put a tattoo on your body, where he's got his
17 wife's face and picture and he's got his wife's initials and
18 his daughters' initials on him, he also has a double barrel
19 shotgun. Don't you know that you tattoo things of importance
20 to you on your body? Double barrel shotgun and a money bag.
21 You know what this man is about, and that doesn't change.

22 And prison didn't change him. You heard that
23 Ashley Villegas told you that he was what was considered a high
24 profile inmate. We talked back in voir dire about you've got
25 those offenders in there that are literally trying to do their

1 time peacefully, trying to earn their good time credit, just
2 trying to do their time and then get out and get released.
3 That wasn't this Defendant. She didn't even know the names of
4 some inmates, but she knew his. Why? She said it wasn't just
5 her, but the other guards, as well, considered him a high
6 profile inmate because he was always running his mouth. You
7 think that's going to be a problem in a correctional
8 institution? Do you think that that could lead to him more
9 likely than not committing criminal acts of violence that are
10 going to constitute him being a continuing threat to society
11 even there in prison? Absolutely. You know how he behaves.
12 You don't have to guess.

13 So he's released from prison July of '09, and
14 you might think that prison might be an eye-opening experience
15 and a waking experience, but was it for this Defendant?
16 Absolutely not.

17 He progressed. You know, Mr. Contente gives him
18 every chance in the world. Of course, the Defendant told him
19 he'd been in prison. He didn't give him all the details, did
20 he? Why would that matter? It's all part of his manipulation,
21 right? But he got the job. He had a good job. He had
22 everything in the world going for him. Have you ever heard of
23 a man with more of a support system than what Matthew Lee
24 Johnson had? He had people right under his -- right under his
25 thumb. He had Mr. Contente entrusting him with the keys to the

1 Kwik Kar and trusting him with the money there at that
2 business, and he stole essentially from the hand that was
3 feeding him and his family. Not a care in the world. And how
4 dare him, how dare Mr. Contente want to prosecute and have the
5 police there, right? He was my friend. No, I thought he would
6 help me. That's what he thought because it's all about that me
7 mentality, is it not? It was all about him. I should be able
8 to steal from him. He's my friend and he should just
9 understand. Really?

10 Not only that, I guess whenever he didn't
11 understand, when Mr. Contente did involve the police and when
12 the Defendant does have that case pending, remember he files
13 for unemployment and he doesn't give them the full truth
14 either, does he? He tells them that some money came up
15 missing, and I got blamed. Really? It's all about character,
16 folks. You know who you're dealing with. He's manipulating to
17 get money from the system because he didn't get his way. He
18 didn't get to steal the money and have his job and that was in
19 2011.

20 Then you heard he was taken to Presbyterian
21 Hospital by the Dallas Police officers and you heard it took
22 grown men laying on him on April 15th, 2012, to try to get him
23 under control and try to get him restrained and that net over
24 him to calm him down. That is how violent he was being that
25 day. You heard him making remarks like I ought to just steal

1 your gun or I can take your gun. Future danger?

2 And you heard from several witnesses, including
3 the Defendant's own brother. Drugs in prison? Absolutely.
4 Absolutely.

5 And that was on April 15th, 2012. And then he
6 goes out to the Express Inn where he's staying and he exposes
7 himself to Carina Pinzon. He lays his hands on yet another
8 female. Remember, he grabbed her by her wrist. Luckily she
9 had that bucket of water that she was able to throw and get
10 away. Remember how nonchalant he was about that when the
11 officers came? He was eating a hamburger like it was just
12 another day. What does that say about the man that you have
13 before you today?

14 And then that leads up to May 20th, 2012. And
15 again, the 14 of you said the facts of the offense for which
16 you found the Defendant guilty of would be most important to
17 you in determining whether someone received a life sentence or
18 a death sentence, most important to you in answering Special
19 Issue Number 1 yes.

20 But we know that that wasn't all. Because if
21 there was ever a time where you might be down on your knees,
22 asking for forgiveness, just waiting peacefully doing your time
23 before you literally go on trial for your life, that might be a
24 time where you're able and willing to behave and control
25 yourself. But we know that wasn't the case. This Defendant is

1 in there still getting tattoos, because you know he's a gift
2 from God. That's insulting. Nancy Harris is dead and her
3 family is hurting, and he's getting Gift from God tattooed on
4 him over in our jail. Really?

5 And then, DSO Pyburn comes in and tells you that
6 she has to move him off the floor because she's concerned
7 because he's getting a little bit too familiar with the things
8 he's saying. Whenever he's saying to her, I ought to just pull
9 you in here. Future danger? Threat to the security of our
10 jail? Absolutely. And then whenever he's telling her, you
11 don't pay me enough money to clean the shower. What do you
12 think that's going to lead to? Remember, that's when the fight
13 started there with Carlton Jenkins. It was right after
14 cleaning. He doesn't like to be told what to do, does he?
15 Future danger?

16 He's telling you what he was about to do right
17 there in the Dallas County Jail, but luckily she transferred
18 him off the floor before the situation got out of control
19 because it was all too familiar to her, what she was looking at
20 and the type of person she was dealing with. She knew. She
21 told you.

22 Let's talk about the facts of this offense
23 because that is what you found him guilty of, an intentional
24 killing in the course of a robbery. You know back before you
25 knew the facts of the case, whenever we just asked you, how you

1 felt about capital murder, an intentional killing in the course
2 of a robbery, most every one of you again said something to the
3 effect of, well, if you've got to do that crime, meaning the
4 robbery, but you don't -- I think one of you put that in
5 parenthesis -- but you don't, but if you've got to do it, why
6 do you have to kill, as well?

7 THE COURT: You've used 30 minutes.

8 MS. EVANS: Thank you, Your Honor.

9 Look at the facts of the offense. He goes in
10 there with a plan. He told you from this stand that he filled
11 it with the lighter fluid and he went in there to rob because
12 he wanted more money to get high. It's all about him. He
13 lights her on fire after he gets everything he wants. And
14 could anything be more personal than him removing that ring and
15 then licking his fingers standing over her. You saw that.
16 Could anything be more vile and disgusting and while she's
17 trembling because he's already poured the lighter fluid on her,
18 remember? As soon as he walked in and got behind the counter,
19 he lights her head on fire on the way out, and walks out. What
20 does that tell you about the man that you have before you
21 today? And then you get to look at what he did in the
22 neighborhood afterwards. He commits another assault right
23 there in the neighborhood behind him by pushing Ken Marecle
24 down and taking his glasses and he's dumping evidence along the
25 way.

1 And, folks, many of you were concerned about if
2 you were going to see any level of remorse. You got to hear
3 that call between he and his wife, same day immediately
4 following this. Take a listen to that again. What's he
5 concerned about? When she's telling the truth of it, you had
6 every opportunity and your selfishness led to this. He's
7 telling her, I got to go or let me talk to the kids. He
8 doesn't want to hear it.

9 If you add all that up, the answer to Special
10 Issue Number 1 is a resounding yes.

11 Special Issue Number 2. There's absolutely
12 nothing sufficiently mitigating based on the evidence that
13 you've heard in this case. The answer to Special Issue Number
14 2 is no. He told you that he came from a good family. They
15 took him to church. They were hard working parents, but what
16 excuse, what cop-out does he want to give you? The drugs made
17 me do it. Folks, that was his excuse every time. Every time.
18 Is it a viable one? No. Nothing makes you do the type of
19 offense that this Defendant did on May 20th, 2012. There is
20 nothing that rises to that level of being sufficiently
21 mitigating to warrant answering this anything but no.

22 So the answer to 1 is yes. The answer to 2 is
23 no. And I'll leave you with this.

24 If we've come a point -- to a point in our
25 society here in 2013 where you can intentionally take the life

1 of a 76-year-old woman, defenseless woman who has given you
2 everything that you want, including the ring off her hand, if
3 you can do that intentional killing in the course of a robbery,
4 the facts of this case, given his criminal history and then
5 result -- and that result in a life sentence rather than a
6 death sentence, based on the facts and the evidence in this
7 case and based on your answers to these special issues, I
8 submit to you that we need to look at our whole system and our
9 whole statute on capital punishment and the death penalty
10 again. It needs to be revamped, because this one is severe,
11 it's horrific, it's heinous, it was violent, and the suffering
12 of Nancy Harris was insurmountable.

13 We ask you to answer Special Issue Number 1,
14 yes, and Special Issue Number 2, no, because that is the only
15 just and right verdict based on the law and the evidence in
16 this case. Thank you.

17 THE COURT: Ms. Evans.

18 Ms. Mulder.

19 (Argument by Ms. Mulder.)

20 MS. MULDER: Ladies and gentlemen, good morning.
21 There's something that Ms. Evans said that I want you to
22 remember. You get to look at the before, during, and after
23 this offense. Oh, but wait. No, you don't get to see the
24 whole after, because why? Because despite what they told you
25 on voir dire, they have withheld evidence from you in this

1 capital murder case. You know that Matthew Johnson got -- two
2 hours after this happened, was read his Miranda warnings,
3 agreed to waive them, and spoke with who, Detective Tooke.
4 He's been here every day. I know he's here somewhere. At any
5 point during this case they could have brought you his words,
6 and they have withheld that from you. We don't get to offer
7 that. The Judge cannot make them offer that. It is their
8 choice. They are standing before you asking you to make what
9 will probably be the most important decision of your life, the
10 death of another human being, and they are asking you to do it
11 without all the evidence. That should appall you. That should
12 frighten you.

13 They're asking you to make a decision about this
14 man's life, despite the fact they have not brought you
15 everything you deserve to know. They have brought you
16 everything else from the time he was 15 and when he was a dumb
17 kid of 18, getting that shotgun tattoo. They brought you
18 everything else. Oh, oh, but, you know, they're not going to
19 bring you his words two hours after this happened. Why? You
20 know if it helped them, like I said before, it would be on all
21 three screens. That should appall you. They said during voir
22 dire they would bring you every piece of evidence in this case,
23 and they have not. That in and of itself is reasonable doubt
24 with regard to Special Issue Number 1.

25 Have they proven beyond a reasonable doubt that

1 he's a future danger in prison? Absolutely not. Absolutely
2 not. The benefit of the doubt goes to who? In every case, in
3 every situation, Matthew Johnson.

4 Matthew Johnson testified to you that he doesn't
5 feel like a man, that he does feel remorseful, and during that
6 phone conversation, he asked, is she dead. And he got off the
7 phone because he was upset. You could hear it in the gargle of
8 his voice. Absolutely, he has remorse.

9 Remember during voir dire we talked to you about
10 mitigation, and all of you said remorse was the most important
11 factor with regard to mitigation. And he is remorseful, as he
12 told you. You know they want to paint a picture that he's some
13 stone cold, sober killer, because remember, during
14 guilt/innocence what did -- what did they assert to you? That
15 he was sober during the commission of this offense. What do
16 you know now? The same thing they do. At the time that they
17 were telling you he was sober, that he has a 20-year history of
18 drug abuse, had a psychotic break a month before this happened.

19 MS. MOSELEY: Objection, that's outside the
20 evidence.

21 THE COURT: Sustained.

22 MS. MULDER: That he was admitted to
23 Presbyterian Hospital under the influence of crack cocaine,
24 PCP, and ice, methamphetamine, so much so that he didn't know
25 where he was or what he was doing or who he was talking to,

1 according to their witness. No, but at that time they wanted
2 you to think he was sober when this happened, that he's a stone
3 cold killer. You know now he's not. And the reason I say that
4 is because they're trying to paint a picture of him that
5 doesn't match the facts of this case.

6 The fact is that Matthew Johnson is a deeply
7 flawed man, with a horrible drug addiction. And they would
8 have you believe and Matthew Johnson believes and his family
9 believes that he came from a good family. Now, he came from a
10 religious family, but I'm sorry, you know, I have a
11 seven-year-old at home. What mother or father doesn't smell
12 marijuana in the hair or clothes of their seven-year-old? What
13 mother or father doesn't smell marijuana in the hair or clothes
14 of their eight-year-old or when he's nine or when he's 10. He
15 loves his parents and he's not going to say a word against
16 them, but come on, this man had no supervision. And once he's
17 smoking marijuana at the age of seven, his brain doesn't have a
18 chance. Truly. He is a deeply flawed man. He is not a stone
19 cold killer if it weren't for the drugs. And he's not using
20 that as an excuse.

21 He told you, he takes responsibility for his
22 actions and he feels incredibly guilty about what this has done
23 to the Harris family. You saw him apologize to them. And to
24 his own family.

25 And you know what was interesting, too, is that

1 I believe during Ms. Moseley's closing arguments in the
2 guilt/innocence phase, she said, you know, he's not wearing a
3 mask because that's how you know he went in and planned the
4 thing and that's how you know he meant to kill her. Well, no,
5 you know he didn't wear a mask because he's so high at the time
6 he commits the offense, he's not thinking. He's not thinking
7 about any consequences at all because his brain is addled by
8 drugs and alcohol.

9 Just because they say it doesn't make it true.
10 You have a right to have all the evidence before you in a case
11 where they are asking you to take a man's life, and they have
12 withheld it. They have withheld it, and I believe -- I
13 anticipate the State will stand up and say, you are the
14 stewards of the community, you will decide the message you're
15 going to send to the community. And Ms. Evans said, you know,
16 if this isn't a case where you -- where the result is the death
17 penalty, I don't know what is, and our law is wrong.

18 Well, you know what, you are the stewards of the
19 community, and you will be telling the people whether or not in
20 Dallas, Texas, a man can get the death penalty when evidence
21 has been withheld. You will be telling everyone in this
22 community if a man can get the death penalty when evidence has
23 been withheld. And they'll tell you, they may get up here and
24 tell you, I don't know, well, it's not important or we don't
25 want to confuse the issue. Well, if it's not important, why

1 not bring it? They brought you everything else. They're not
2 bringing it because it's important. And if it scares them that
3 much, then they should rethink what they're asking you to do.
4 It is that important.

5 What Matthew Johnson did was horrible, and he
6 understands that. And he knows. He knows. He will die in
7 prison, absolutely. Your verdict has assured that. You know,
8 when you think about the kind of person Matthew Johnson is -- I
9 mean, he is flawed. He has made mistakes. He also held a job
10 at Sanden International. His coworkers liked him. He was a
11 normal guy, because when he's sober, he is. When he's sober,
12 he can function.

13 And we brought you all of the letters from his
14 family. You know when he was in prison, he was trying to
15 better himself -- I mean, he did -- all the Bible completion,
16 all the Bible schools he completed by correspondence. That
17 takes effort, time, and thought. When he's sober, he can
18 function. I mean, that man is not a stone cold killer. He's a
19 deeply flawed man with a horrible drug addiction during which
20 he committed an absolutely horrific and horrible crime.

21 But he is loved, absolutely. And we brought you
22 all of his letters, and please go back and read them. We
23 didn't want to take up too much of your time, but please go
24 back and read them. He is beloved by Daphne, and there is
25 absolutely no evidence that since he has been released from

1 prison he has done anything physical toward her. There is not
2 one single piece of evidence in front of you that says that he
3 has been violent with her since he got out of prison -- since
4 before prison.

5 Dear daddy, stay strong and remember no matter
6 what happens, we'll all still be here. From Makayi, his
7 14-year-old. And we aren't going to drag these children in to
8 testify before you. That's not something we're going to do.
9 From Deja, hey, daddy, are you good, I hope. That was funny.
10 I know you used to ask me who is daddy's big girl. I love you
11 a lot and hope to write again soon.

12 THE COURT: You've used 12 minutes.

13 MS. MULDER: Thank you, Your Honor.

14 Hi, daddy, how are you doing? It's my first day
15 of school. It was so fun. We're still getting new people. I
16 just wanted to say hi, and I love you so much. Bye daddy, love
17 and take care, Deja.

18 Please read these letters. Please.

19 This little girl deserves to know her daddy, and
20 these two girls do, as well.

21 Now, I know and anticipate the prosecution will
22 stand up and say, well, Ms. Harris's grandchildren didn't have
23 a choice. Their grandmother and great grandmother was taken
24 away, and absolutely it is horrible what he did and wrong. And
25 I anticipate they'll stand up and say, you know, all they get

1 to do is go to a cold cemetery and lay flowers on a sterile
2 grave. That's the only visitation they'll get with Nancy
3 Harris. And, unfortunately, that's true. And we can't deny
4 that. But two wrongs don't make a right, do they? Two wrongs
5 don't make a right.

6 THE COURT: Thank you.

7 Mr. Weatherspoon.

8 MR. WEATHERSPOON: May it please the Court.

9 THE COURT: Thank you, sir.

10 (Argument by Mr. Weatherspoon.)

11 MR. WEATHERSPOON: Good morning.

12 Ladies and gentlemen of the jury, I want to take
13 you back to what we talked about in voir dire. And if you look
14 at Special Issue Number 1, the State has to prove to you beyond
15 a reasonable doubt, which we explained to you was the highest
16 standard in law. We talked about preponderance of the
17 evidence. We talked about clear and convincing. And we talked
18 about beyond a reasonable doubt. They have to prove to you
19 that there is a probability, more likely than not, that Matthew
20 Lee Johnson would commit criminal acts that would constitute a
21 continuing threat to society.

22 In voir dire we talked about what his society
23 would be. His society will be the Texas Department of Criminal
24 Justice, prison. And one thing I do agree with Ms. Evans about
25 is sometimes past behavior is indicative of future behavior.

1 In the four years and 10 months that he was in the Texas
2 Department of Corrections, one fight. That's the only act of
3 violence that they could bring you. And remember, they have
4 the burden of proof to prove it to you beyond a reasonable
5 doubt. So in four years and 10 months, he was involved in one
6 fight. And there is a dispute as to who initiated the fight,
7 whether it was Mr. Jenkins or whether it was Mr. Johnson. One
8 fight.

9 In 18 months in the Dallas County Jail, did you
10 hear any evidence of any violence, of him being involved in any
11 physical -- excuse me, confrontation? No. They have to prove
12 to you that he will be a threat while incarcerated. And in two
13 instances of his being incarcerated, you only heard about one
14 fight. That's it. That's all.

15 Now, they can say -- and I'll agree, he
16 disobeyed some rules, he got some tattoos when he wasn't
17 supposed to. But is that an act of violence? Does that cause
18 a continuing threat? That's what you need to focus on.

19 And you know we told you in voir dire that we
20 didn't have any burden of proof in Special Issue Number 1. The
21 law presumes the correct punishment is life without parole.
22 The burden is on them, but even though we didn't have any
23 burden, we brought you evidence. We brought you three experts.

24 Let's talk about Mr. Au Buchon. Over 25 years
25 experience in the Texas Department of Criminal Justice. And he

1 told you about the classifications from G1 to G5, and what do
2 we know about Matthew Lee Johnson? He arrived as a G3, he
3 worked his way up to a G2. He got into a fight. He went down
4 to a G4. He worked his way back up to a G2. And then
5 eventually to a G1, the least restrictive situation. The Texas
6 Department of Criminal Justice, who has experience in
7 evaluating this, who it is their job to evaluate this, who it
8 is their responsibility to evaluate this, they had Matthew
9 Johnson at a G1 for three years out of the four years and 10
10 months he was in the Texas Department of Criminal Justice. He
11 was a G1 for three years. He was allowed work detail outside
12 the prison walls. Did you hear any evidence of any violence,
13 any inappropriate behavior, him doing anything wrong while he
14 was at a Level G1? He successfully completed -- completed his
15 prison sentence as a G1.

16 Then you heard from Dr. Sorensen, and what did
17 he tell you? He brought you all of the data, the research. He
18 gave you the five factors that listed -- that are listed in the
19 literature to determine future dangers. He talked to you about
20 it -- age, education, membership in a gang, criminal -- the
21 offense you're in custody for. He listed all the things that
22 are used to evaluate whether an inmate will be dangerous in the
23 future. He showed you the statistics. He had a PowerPoint
24 presentation. He put it up there. And what did he tell you?
25 Based on all the research, all the records that are Matthew Lee

1 Johnson's, he would not commit criminal acts in the future that
2 would a threat to society. That's what his testimony was.
3 With his 20 some odd years of experience, Mr. Au Buchon, he
4 would not be a threat in TDC.

5 MS. MOSELEY: I object. That's a misstatement
6 of the evidence.

7 THE COURT: Sustained.

8 MR. WEATHERSPOON: Your Honor, I obviously
9 disagree with Ms. Moseley.

10 If you -- you -- if there's a disagreement
11 between you all, you all can ask for it to re -- be read back.
12 If you all think there's a disagreement in testimony, and I'll
13 ask you to, because Ms. Moseley is incorrect.

14 THE COURT: The jury will recall the testimony
15 as they heard it.

16 MS. WEATHERSPOON: Mr. Au Buchon told you what
17 he thought.

18 And then you heard from Mr. Aiken, over 40 years
19 in the profession. This is a man who was hired by the United
20 States Congress to evaluate prisons in this country for
21 legislation that was signed by President George Bush. This is
22 a man of national stature, and he reviewed all the records, all
23 the information on Matthew Lee Johnson, and he told you, based
24 on his 40 years of experience, that Matthew Lee Johnson would
25 not constitute a continuing threat.

1 We brought you three experts to tell you this
2 man would not constitute a continuing threat. And you know
3 what's -- what's as important as that? It's not just what you
4 heard from us. It's what you didn't hear from them. Don't you
5 think that if she could have brought you one witness to say the
6 methodology was incorrect, the analysis was incorrect, the
7 conclusion was incorrect, don't you think that if the State had
8 someone who could tell you Dr. Sorensen was incorrect, Mr.
9 Aiken was incorrect, the type of analysis that they did was
10 incorrect, don't you think that person would have been on the
11 witness stand? You know they knew it was coming, because when
12 Ms. Moseley cross examined Mr. Sorensen -- excuse me, Dr.
13 Sorensen and Mr. Au Buchon, she referenced -- part of her
14 question was, when you've testified in the past, so she knew
15 what their past testimony had been. She knew what was coming.
16 And if she had something that would disprove what they said,
17 something that would contradict what they said, don't you think
18 you would have heard it on the witness stand? But you didn't.
19 And I submit to you there's a reason why you didn't. Because
20 all the experts who looked at the data, experts we brought you
21 came to the same conclusion, that this man would not constitute
22 a continuing threat in the Texas Department of Criminal
23 Justice.

24 Now, as Ms. Mulder told you, we're not going to
25 sit here and tell you Matthew Lee Johnson is a saint. We're

1 not going to sit here and tell you he did things that weren't
2 good, but even remember some of the things you heard. Remember
3 Amy Armstrong who he had a volatile physical relationship with
4 when he was 18 years old, and the police asked her, did you
5 want to file kidnapping charges on him when he took her child.
6 And what did she tell you? No, because he would never harm my
7 child, that he was good with my children, that he loved my
8 children. Throughout their tumultuous relationship, Amy
9 Armstrong still told you that she had no question in her mind
10 that this man would not harm her children.

11 THE COURT: You've used 10 minutes, Mr.
12 Weatherspoon.

13 MR. WEATHERSPOON: Thank you, Your Honor.

14 When you heard Officer Pyburn testify, she told
15 you she had a dispute with him about cleaning the shower. He
16 didn't do what he was supposed to do cleaning the shower. But
17 did you hear anybody from the Dallas County Jail say he had
18 done anything physical or violent in his 18 months in the
19 Dallas County Jail? No. While he's been in custody, whether
20 it's the Dallas County Jail or the Texas Department of Criminal
21 Justice, you've only heard about one fight with one inmate and
22 that's it. No gang affiliation. He's never been caught with
23 any contraband, any drugs in prison or the Dallas County Jail,
24 any weapons in prison or the Dallas County Jail. None of that.

25 As Ms. Mulder told you, while in custody, he

1 attended Bible classes or completed Bible courses. Texas
2 Department of Criminal Justice was satisfied that he should be
3 at a Level G1, the lowest level of security. That's the
4 evidence.

5 The professional -- every professional in the
6 field who's testified in this case has told you the same thing.
7 If they had had any evidence to contradict that, you would have
8 heard it from the witness stand. So when you go back to
9 deliberate, remember what the experts told you. The people
10 who've evaluated Matthew Lee Johnson's records, who've worked
11 in the Texas Department of Criminal Justice, because remember,
12 their witness, Warden Nelson, she said -- I don't think she
13 testified to any of that. So remember the expert testimony you
14 heard.

15 And if you do, the appropriate sentence, the
16 sentence the law presumes is the correct sentence, is a life
17 sentence without the possibility of parole.

18 THE COURT: Thank you, Mr. Weatherspoon.

19 Ms. Bernhard.

20 (Argument by Ms. Bernhard.)

21 MS. BERNHARD: May it please the Court.

22 We can't change what happened to Nancy Harris,
23 and I'm not going to sit up here and tell you that that was in
24 any way okay or in any way not horrific. We can't change that.
25 I wish we could.

1 And most importantly, Matthew Johnson wishes
2 that we could. You heard that from him. But we can't, and
3 your verdict can't.

4 What you have to do is base your verdict on the
5 law and the evidence, just like Ms. Evans told you. We agree
6 on that.

7 Now, the State of Texas would have you believe
8 that life without parole is a walk in the park, that that's not
9 punishment at all. You know differently. Common sense tells
10 you differently. And by your verdict, convicting him of
11 capital murder, you have assured that Matthew Lee Johnson is
12 going to die in the Texas Department of Criminal Justice,
13 period. It's just a matter of how. You know that life without
14 parole is a serious punishment.

15 Nowhere in the special issues, nowhere in the
16 jury charge that the Judge read to you and that you're going to
17 take back to that jury room, nowhere in there does it ask you
18 does he deserve death. And we talked about that in voir dire,
19 that that's not how the State of Texas determines who lives and
20 who dies. We answer very specific special issues. We base it
21 on future conduct -- future conduct in prison.

22 We brought you evidence that told you beyond a
23 reasonable doubt that Matthew Lee Johnson is not going to be a
24 danger in prison. We brought you the evidence. We brought you
25 the experts, including Warden Nelson who told you what factors

1 make a person dangerous in prison.

2 Professor Sorensen brought you the data, the
3 studies. Your membership in a gang, your education level, your
4 age. And you can tell that by looking at his criminal history.
5 A lot of stuff when he's young and stupid. But as the years go
6 by, as he gets older, there's less and less. Common sense
7 tells you that as people get older, they get less stupid, they
8 get less dangerous, and that's what the experts told you.

9 Professor Sorensen also told you that the fact
10 that somebody is serving life without parole makes a person
11 less dangerous. And I asked him, I said, well, that seems a
12 little strange. That seems counterintuitive, but he said
13 that's what the data showed because people who are serving life
14 without parole know that they're going to be there for the rest
15 of their life and they're going to do what they can to make
16 that life as tolerable as it possibly can be. It makes them
17 less dangerous.

18 And you also heard from Professor Sorensen that
19 one's -- that past behavior in the free world does not compare
20 to behavior in prison. It's like comparing apples and oranges.
21 And that makes sense. Prison is not like our day-to-day life
22 out in the free world. Prison is a hard, difficult, ugly
23 place, and you can't look at somebody's behavior in the free
24 world and say that translates into his behavior in prison.
25 Because professor told -- Professor Sorensen told you the data

1 doesn't support that. The studies don't support that. It's
2 simply not true.

3 But when you look at Matthew Johnson's behavior
4 in prison, as Mr. Weatherspoon pointed out, we have almost six
5 years of incarceration between prison and the Dallas County
6 Jail, not to mention all the other times that he's been in
7 jail. And what did they bring you? They bring you one fist
8 fight with a convicted child molester, one. And, yes, Carlton
9 Jenkins was seriously injured. That's because when he fell
10 down, he hit his head on concrete and steel because prisons are
11 literally hard places. There are no soft landings when you
12 fall in prison. And that's it. That's all the violence that
13 they brought you in all the time that he has been in prison.
14 That's it.

15 Now, the State of Texas wants you to believe
16 that TDCJ is run by a bunch of morons and imbeciles who just
17 let the inmates run wild, just let the drugs flow freely and
18 the weapons and everything else. They have no control over
19 anybody. You heard Warden Nelson. You saw Warden Nelson. Do
20 you think she lets anybody get away with anything? I think
21 Warden Nelson and the other wardens like her that run TDCJ can
22 very easily control the likes of Matthew Lee Johnson. That's
23 what they do. They put a lot of effort into how we go about
24 controlling people, how we go about keeping people safe. And
25 they do a good job. Warden Nelson told you that, that TDCJ is

1 a very well run prison.

2 Frank Au Buchon told you that, after almost 30
3 years working there.

4 And Mr. Aiken, with his 40 years in the
5 industry, told you that TDCJ was a well-run prison and that
6 they can control the likes of Matthew Lee Johnson. That's what
7 the evidence tells you. What the State brings you and what
8 they're arguing to you are possibilities. Well, yeah, anything
9 is possible. But that's not what the law says. That's not
10 what the special issue says. And we talked about that in voir
11 dire. Probability does not mean a possibility. It means
12 evidence showing you more likely than not. And that's what
13 they haven't brought you, because it's not there. Because when
14 you look at the characteristics of Matthew Lee Johnson, when
15 you look at the factors that make a person dangerous in prison,
16 he doesn't fit the bill. Prison can control him. That's what
17 all the witnesses told you.

18 Now, in regard to his disciplinary record,
19 Warden Nelson told you, well, not everybody gets written up for
20 everything, and sometimes some records get destroyed when a
21 person leaves prison. Possibilities, ladies and gentlemen.
22 They want you to speculate, oh, well, he must have had all
23 these other disciplinaries that somehow got destroyed or the
24 guards just ignored it. That's not evidence. That's not a
25 probability. Because Warden Nelson also told you that if it

1 was something that was important, if it was something that
2 would reflect on his behavior in prison, it did not get
3 destroyed. Things like fights, things like possession of
4 contraband, those don't get destroyed. He didn't have any
5 possession cases when he was in prison, not even possession of
6 a few too many stamps. He can be controlled in prison, where
7 he will be for the rest of his life.

8 Now, I want to talk a little bit about
9 mitigation and the second special issue.

10 Now, we brought you evidence about Matthew Lee
11 Johnson's character and his background and his addiction and
12 mental illness and his struggles, not to excuse what he did,
13 not even to explain what he did, because there is no good
14 explanation. But you all told us in voir dire that if you're
15 going to decide whether or not somebody lives or dies, you want
16 to know everything there is to know. That's why we brought you
17 that evidence.

18 And what do we have in the way of Matthew Lee
19 Johnson's life and in the way of mitigation that you have to
20 consider in this case? The law requires that you consider
21 mitigation.

22 First and foremost, you know that he was
23 addicted, and you know that he had an addiction issue for
24 probably 30 years of his 38-year life, maybe even 31. That's
25 something that he has struggled with repeatedly throughout his

1 life, because that's the nature of addiction. Addiction is a
2 cold, cruel mistress, and he tried and he tried and he tried,
3 but he never got away from it.

4 And the State wants to tell you, well, he wasn't
5 intoxicated on this -- in this offense. And even if he was,
6 well, you know, he can -- he can still get drugs in prison.
7 It's a possibility. It's not a probability. They didn't bring
8 you any evidence of that.

9 You know that he had a problem with addiction
10 because not only does Matthew Lee Johnson tell you that, but
11 the records tell you that. We know that as early as 2002, he
12 admits himself to Green Oaks Hospital when he's 26 years old.
13 And he tells them for the last several years he's been drinking
14 six to 12 beers a day, using 50 to a hundred dollars of crack
15 cocaine daily for the past year, smoking marijuana several
16 times a week and smoking PCP several times a week. This is way
17 back in 2002. You know he's got a problem. You know he's
18 struggling with addiction.

19 And you also heard from Dr. Roache that drugs
20 change a person's brain. You also heard from Dr. Roache that
21 addiction can be genetic, that there's a strong genetic factor.
22 And you also know that from the records. You know that of the
23 Johnson boys, all three of them had problems with substance
24 abuse. Matthew Lee Johnson started smoking marijuana at the
25 age of seven -- seven. And he wanted that marijuana badly

1 enough that he subjected himself to sexual abuse in order to
2 get it. That's not a voluntary act. That's a disease.

3 We also know that he had substance abuse issues
4 when a month before this offense he's taken to Presbyterian
5 Hospital and he's psychotic. Lisa Ann Parker, the social
6 worker, told you that. And she told you that psychosis is a
7 break with reality. So they want to say, oh, he's struggling
8 and -- and fighting the officers because he's an evil man.
9 He's an addict who's having a break with reality. He tells
10 them he's been smoking crack cocaine, ice, and marijuana laced
11 with PCP. We know he has addiction issues. It's not just what
12 he's saying. The records reflect that. The trained
13 professionals recognize it and identify it.

14 We also know that's the case from the Dallas
15 County Jail records where he tells them and they note, cocaine,
16 PCP, weed, Xanax. That's what the records tell us. It's not
17 just Matthew Lee Johnson saying, oh, I have a drug problem.

18 We also know from his records in the Dallas
19 County Jail that Matthew Lee Johnson is remorseful. The State
20 wants to get up here and argue that he's not remorseful for
21 this offense. He told you he was. And I'm sure they're going
22 to say, oh, well, you can't believe him because he's the
23 Defendant, he's trying to save his own life. He didn't know
24 the jail people are going to write that down. These are
25 trained professionals who deal with inmates every single day.

1 They noted remorse. He told you he was remorseful. He told
2 you he deserved the death penalty. He told you that he
3 deserved to be set on fire. And the only reason he was asking
4 you to spare his life is because of his daughters, because of
5 Makayi, Deja, and little Matduxx. That's mitigation. That's
6 all you need.

7 As Ms. Mulder pointed out, the State of Texas
8 never showed you the interview that was conducted with police
9 officers two hours after the offense happened. You have to ask
10 yourself why not? Because you know if he denied the offense,
11 they would have played that to impeach his testimony. You know
12 that if he said anything about he wasn't remorseful in that
13 interview, they would have played it to impeach his testimony.
14 So what does that tell you that that interview showed? That
15 tells you that when he spoke with the police two hours after
16 this offense, that Matthew Lee Johnson was remorseful and sorry
17 and horrified by what he had done. That's what that tells you.
18 So don't let them convince you that he didn't have remorse,
19 because you heard it from him and you can deduct it from the
20 records that you didn't see. He told you he was horrified.

21 Now, the jail records also diagnose him as
22 polysubstance dependent and with substance-induced mood -- mood
23 disorder. And you also heard some records, particularly the
24 Green Oaks records back in 2002, that diagnosed him with severe
25 depression. The State wants to say, well, he didn't have

1 mental illness, he just was depressed because he was using
2 drugs. When you start smoking marijuana at the age of seven,
3 does it really matter whether you're depressed or whether
4 you're polysubstance mood disorder? The symptoms are the same.
5 The agony is the same. It doesn't matter. It's like the
6 chicken and the egg, which came first. When you start smoking
7 marijuana at the age of seven, that tells you something. That
8 tells you a lot.

9 And you know that Matthew Johnson has struggled,
10 and he's tried to beat this habit. He has periods of time
11 where he holds a job, loves his family, takes care of his
12 family, does what he's supposed to do, and then that addiction
13 raises its ugly head again and he can't say no. And Dr. Roache
14 told you it's not a matter of just saying no.

15 The discharge material that he gets from Green
16 Oaks says it has nothing to do with willpower. It's more
17 powerful than the need for food or water. He struggles with
18 it. And they want to try to tell you that, well, every time,
19 you know, if he's in jail, you know, he can get his hands on
20 drugs and -- and he'll be violent in prison. But that's not
21 what the evidence tells you. That's not what his record tells
22 you. That tells you that TDCJ can confine him, and they can do
23 so without him being a continuing threat. That's what our
24 prisons are for. To control people. To control people who
25 have criminal proclivities, to control people who break our

1 laws. And there are a lot of people that work in the prison
2 industry and devote their entire lives to making sure that
3 prisons can control people. And for the most part, they do it
4 very well. Yes, there are possibilities. Anything is
5 possible.

6 But that's not what that special issue asks you
7 to do. That special issue asks you whether or not the State of
8 Texas proves it to you beyond a reasonable doubt. And a
9 probability is not a possibility. The evidence isn't there
10 that he's going to be a continuing threat.

11 When you were sworn in jurors -- as jurors in
12 this case, you took an oath to base your verdict on the law and
13 the evidence. The law in the punishment phase of a capital
14 murder trial doesn't ask you about possibilities. Doesn't ask
15 you to speculate about what might happen. It asks you what the
16 State has proven to you can happen. And what the evidence
17 proves to you is that Matthew Lee Johnson can be very well
18 controlled in prison. That's what our prisons are for.
19 Matthew Lee Johnson can serve the rest of his life in prison.
20 He can die in prison.

21 He can't change what happened to Nancy Harris,
22 and you can't change what happened to Nancy Harris. But each
23 and every one of you can go back into that jury room and make a
24 personal moral judgement as to whether or not Matthew Lee
25 Johnson lives or dies, but you have to base your verdict on the

1 evidence. And the evidence that you heard in this case does
2 not tell you that Matthew Lee Johnson meets the criteria for
3 somebody that we need to execute because he can be controlled
4 in prison and that's what they're for.

5 Follow your oath, follow the law, and answer
6 those questions in such a way that Matthew Lee Johnson spends
7 his life in prison where he will be controlled. Thank you.

8 THE COURT: Thank you, Ms. Bernhard.

9 Ms. Moseley.

10 (Argument by Ms. Moseley.)

11 MS. MOSELEY: Matthew Lee Johnson has been
12 indulged during this trial. He's been given all his
13 constitutional rights. We have made sure that all of his
14 rights have been protected. He's had perfectly good lawyers to
15 come in here and tell you exactly what we knew they would tell
16 you. He won't be a future danger. You can ignore all of those
17 prior violent acts. You can ignore his character. You can
18 ignore who he is and have mercy on him, I guess. They're
19 asking you to sentence him to life because life in prison is so
20 horrible. It's such a terrible punishment. Life in prison
21 where he can have contact visitation. Life in prison where he
22 can continue to call home and ask them to put money on his
23 books.

24 We need to remember what this case is about and
25 why we're here. And we're here because of what he did to Nancy

1 Harris, a 76-year-old great grandmother. Drugs didn't do that
2 to her. Matthew Lee Johnson did that to her.

3 Their own expert, Dr. Roache, told you drugs
4 don't make people violent. Drugs exacerbate an underlying
5 violent character, and that's what we have here. That's what
6 we've got.

7 Your character is defined not by your words, but
8 by your deeds. Look at his deeds over the past 20 years. Look
9 at that, and you'll know who he is. You heard a day and a half
10 of woman after woman after woman coming in here and telling you
11 he's a good man, he's a good father, he's a good husband. That
12 is offensive to everyone who has a good father, a good husband,
13 or a good man in their lives. It's offensive. Good men don't
14 hit women. Good men don't rob women. Good men don't
15 masturbate in front of 18-year-old women who are just trying to
16 earn a living. And remember who's working in the prison when
17 you go back there and decide whether he's a future danger,
18 because you heard who's working in there. You saw who works in
19 there. Ashley Villegas, that's who's working there.

20 The Texas prisons do a good job. They do the
21 best they can do. But as Warden Nelson sat up here and told
22 you, she does the best she can do and she tries to run a
23 well-run prison, but they find weapons every day, they find
24 drugs, they find cell phones. They're short prison guards.
25 These guys get away with a lot, and they certainly have the

1 opportunities. His own brother told you it's up to the person
2 to decide.

3 There are people in there, believe it or not, in
4 the Dallas County Jail and in the penitentiary, who don't have
5 one single disciplinary violation. They are there to do their
6 time. That's not who he is. That's not who he is.

7 Don't be fooled by his words. Remorse is more
8 than saying you're sorry. He would have you believe that he
9 had remorse every time he hit his wife, but remember he doesn't
10 even really accept that responsibility, does he? For remorse
11 to be genuine, don't you have to first accept your
12 responsibility? Well, I never hit anybody to hurt them. I
13 didn't hit her to hurt her. I didn't hit Amy to hurt her. I
14 didn't hit Daphne to hurt her. I just wanted to keep them off
15 of me.

16 I didn't -- I didn't mean to hurt David
17 Contente. I just needed help. I just needed help.

18 I didn't mean to hurt anybody. I only set Ms.
19 Harris on fire because she was coming at me. Can there be
20 anything more repulsive or more despicable than that? And then
21 say you're sorry. And you know how you know he's not sorry?
22 Because the one woman who knows him better than anybody, his
23 wife, Daphne, told him on that call. You heard him. Well, I'm
24 sorry. No, you're not, Matthew. No, you're not. You had
25 every opportunity to get help. You didn't want it. You chose

1 drugs. You're not sorry. Because you know -- all of you know
2 that a person who says they're sorry and continues to do the
3 same thing over and over again isn't truly remorseful, because
4 for true remorse, you have to feel bad about what you did and
5 you have to try to change the behavior. You have to accept
6 responsibility, and you have to try to make amends. And he
7 hasn't done any of that in his life.

8 He was remorseful when he stole from David
9 Contente, so remorseful that he went and asked for his last
10 paycheck and then filed for unemployment benefits and then
11 appealed the denial of the unemployment benefits. He does what
12 works for him. He's not sorry.

13 He admitted that he didn't even mention Ms.
14 Harris's family in a single call until the week before his
15 trial. He is sad because of what this has done to him. And no
16 real man, no real father stands behind their children and says,
17 have mercy on me because of them. Because you know he's
18 worried about him. When he's talking to Makayi on the phone
19 and she's upset because she didn't have enough money for chips.
20 And he says, well, you probably didn't need them anyway. And
21 30 seconds later tells Daphne, I need more money on my books.
22 That tells you what he's about, who he is.

23 And when we ask you to decide what would be
24 important to you in answering that question about will somebody
25 more likely than not be a threat in the future, the facts of

1 the crime, the person's character, and their background, we
2 brought you all of that. You didn't need to see a videotape of
3 this Defendant who got caught red-handed in the neighborhood,
4 identified on video saying he was real sorry. We bring you
5 evidence that matters, and him saying he's sorry one more time,
6 him saying the drugs did it one more time is not necessary.
7 You heard that. And it's not credible.

8 You know who he is. You know what he is. You
9 know what he did, and yesterday you learned a little bit about
10 who Ms. Harris is, who she was, and what she meant to her
11 family. The last time that her family saw her. I want y'all
12 to think about that and think about what that call must have
13 been like that the family received, her sons. One of her sons,
14 a real man, worked two jobs to support his family, trying to
15 sleep on Sunday morning because he had worked Saturday night,
16 having to be woken up and told you got to go to Parkland to see
17 your mom because Matthew Lee Johnson had a drug problem. You
18 ask yourselves when you watch that video, did he look like he
19 was high to you? That description you saw in Presbyterian
20 records, is that what you saw? Absolutely not. He wasn't
21 high. He wasn't high. He may have been coming down. He may
22 have been using crack the night before, but he wasn't high when
23 he committed that crime. He was cold and calculated.

24 He picked two packages of cigarettes apparently
25 by brand, very carefully chosen. He tried to get the ring off.

1 He had to think about what can I do to make that come off a
2 little easier. And he licked his fingers as he stood over her.
3 He set her on fire, walked around her, grabbed candy off the
4 counter, and walked out. And you know after having heard her
5 screams yesterday on that video, you know he heard that. Is
6 that remorse? You know he heard it. While he was getting rid
7 of the evidence and trying to get away with his crime, you know
8 he heard it.

9 When he's in the backseat of that car and
10 calling the officer by name, was he high then? When he told
11 Officer Perez, what took y'all so long, y'all are getting slow.
12 Was that remorse? He's sorry because he got caught, and I know
13 that we're asking you to make a decision that's going to result
14 in his eventual execution. And I know that that is a heavy
15 burden on a person. You all told us that that was a burden you
16 could accept and that you would do it in an appropriate case.
17 And when you go back there and think about who he is, what he
18 is, what he's done over and over again and you think about all
19 of the people who thought he wouldn't be a threat in the
20 future, who thought he had learned his lesson, who thought he
21 wouldn't do it again, ask yourselves if you want to be wrong
22 about that. Ask yourselves if you want to be another person
23 that he has convinced that he won't do it again.

24 Following your oath, the answers to these
25 questions are very clear. He's never been held accountable by

1 anyone. Now is the time for you all to hold him accountable
2 and to protect people from him. It is a heavy burden, but he
3 has to be held accountable and it can't be easy on those kids
4 at home. It can't be easy, but they need to know that there
5 are consequences for behavior. And some day they'll understand
6 that, but having three children who love you is not mitigation.
7 It does not lessen his moral blameworthiness. If anything, it
8 increases his moral blameworthiness. You all are not doing
9 anything to him or his children. He did it. He brought that.
10 He is the cause of all of this.

11 But you have the burden of following the law,
12 following your oath, and answering those questions in a way
13 that will ensure that we'll be protected, that people in the
14 future will be protected from this Defendant, and that there
15 will be justice served for Nancy Harris. Let's not lose sight
16 of that. When you're deliberating your verdict, you think
17 about the vulnerable and who his victims have always been,
18 weaker than him, and how he doesn't accept responsibility. And
19 it's always somebody else.

20 Well, Mr. Marecle fell. Carlton Jenkins fell.
21 I didn't mean to hurt -- I didn't hit anybody to hurt them.
22 Ms. Harris came at me. You know who he is and you know what
23 you have to do. It may not be easy, but you can't walk out of
24 this process knowing you didn't follow the law and knowing you
25 didn't follow your oaths. That's why you're all here. That's

1 why the 14 of you are sitting in these seats, because we knew
2 that you could do the tough job, that you could -- that you
3 could follow your oaths, and that you would make sure that the
4 laws in the State of Texas are upheld, and that people who
5 attack the vulnerable and the weak will face justice.

6 Him coming in here and asking for mercy after
7 having subjected you all to the evidence that you've heard,
8 after having to listen to Ms. Harris cry, God, help me, God,
9 help me, and to come in here and see that he has tattooed on
10 his chest, Gift from God, if there is anything that speaks
11 about what he thinks or about who he is, that does. He thinks
12 God put him in jail to protect him. Hold him accountable.
13 Protect our community and protect society, protect the weak
14 from Matthew Johnson. Follow your oaths and answer yes to
15 Special Issue Number 1, because he has proven to you that he
16 will more likely than not continue that behavior. And no to
17 Special Issue 2 because there can never be anything -- anything
18 sufficiently mitigating to warrant a life sentence after doing
19 what he did to Ms. Harris and after living the life he's led.

20 I know you'll take your job seriously. We thank
21 you for your attention, and we ask you to follow your oaths and
22 do the right thing. Thank you.

23 THE COURT: Thank you, Ms. Moseley.

24 Members of the jury, we're going to go ahead and
25 recess now for you to begin deliberations.

1 Gentlemen, you will need to remain at the
2 courthouse and be sequestered tonight, if necessary, until a
3 verdict is rendered. The jury will be eating lunch in the
4 cafeteria. For those of you who brought food, I'm not sure if
5 there's a microwave in the cafeteria where you'll be eating, so
6 you'll probably need to heat your food up here if you brought
7 it. Those of you who brought food will need to take it to the
8 cafeteria and eat with those of you who haven't. And we'll
9 break for lunch when you -- when you request it. You are -- we
10 are in recess, and you will begin deliberations.

11 THE BAILIFF: All rise.

12 (Jury excused from courtroom.)

13 THE COURT: We stand in recess.

14 MS. MOSELEY: Judge, before we break, I'd like
15 to offer the PowerPoint that we used during the punishment,
16 just for the record.

17 (State's Exhibit 197 offered.)

18 MS. BERNHARD: No objection.

19 THE COURT: Admitted for the record.

20 (State's Exhibit 197 admitted.)

21 (Recess of proceedings.)

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Reporter's Certificate

THE STATE OF TEXAS:

COUNTY OF DALLAS:

I, Darline King LaBar, Official Court Reporter in and for the 363rd District Court of Dallas County, State of Texas, do hereby certify that the above and foregoing volume constitutes a true, complete and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in the Reporter's Record, in the above-styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this Reporter's Record of the proceedings truly and correctly reflects the exhibits, if any, admitted by the respective parties.

WITNESS MY OFFICIAL HAND this the Reporter's Certificate on the 25th day of February, A.D., 2014.

\s\Darline LaBar
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